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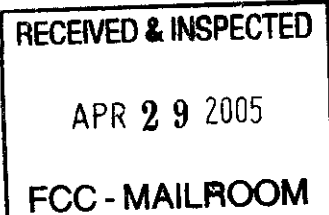
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April 27, 2005

**VIA OVERNIGHT MAIL**

Federal Communications Commission  
Washington, D.C. 20554

Re: Application for Review filing re File No. SLD-148309, CC Docket No.  
02-6

**To Whom It May Concern:**

The law firm of Best, Best & Krieger LLP represents the Riverside County Office of Education ("RCOE") in this matter and is filing this Application for Review on its behalf.

Last night, our office attempted to file this Application for Review via e-mail pursuant to *Implementation of Interim Filing Procedures for Filings of Requests for Review*, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, FCC 01-376, 17 FCC Rcd 339 (2002). This Order provides that the FCC will accept e-mail filings for applications for review but does not include a maximum size for the document.

We e-mailed three (3) Adobe Portable Document Format (PDF) attachments which comprise the entire Application for Review. Typically, our email server tells us immediately if an e-mail is undeliverable. My assistant waited for approximately 15 minutes to ensure that no such messages were received before leaving the office. As such, we were comfortable that the e-mail delivery was successful.

This morning, my assistant relayed to me that our e-mail to <CCBSecretary@fcc.gov> was returned one hour after it was sent as undeliverable because the recipient's mailbox was full, and that the message exceeded a maximum fixed size. We have attached a true and correct copy of this e-mail.

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**From:** Kay Bliss  
**Sent:** Tuesday, April 26, 2005 6:15 PM  
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Federal Communications Commission

Washington, D.C. 20554

Via E-Mail: CCBSecretary@fcc.gov

To Whom It May Concern:

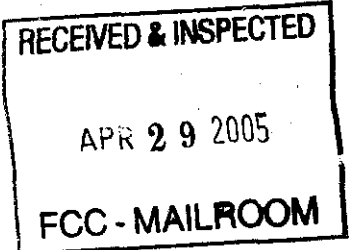
Please find attached Riverside County Office of Education's Application for Review regarding File No. SLD-14309, FCC Order DA 05-498 (CC Docket 02-6). There are 3 pdf documents in total which comprise this Application for Review. Please contact Rina Gonzales (rina.gonzales@bbklaw.com) or me immediately if you have any questions or comments.

Kay Bliss

Assistant to Rina M. Gonzales, Esq.

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554



In the Matter of	)	File No. SLD-148309
	)	
Request for Review of Decision of the	)	CC Docket No. 02-6
Universal Service Administrator	)	
	)	FRN Nos. 299376, 299377, 299378,
by	)	299379, 299381, 299382, 299355,
	)	299356, 299359, 299361, 299363,
Riverside County Office of Education	)	2999365, 399367, 299368, 299370,
Riverside, California	)	299371, 299372 and 299373
	)	

APPLICATION FOR REVIEW

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April 26, 2004

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## I. INTRODUCTION

The Riverside County Office of Education ("RCOE"), pursuant to Section 1.115 of the Rules of the Federal Communications Commission, ("Commission")<sup>1</sup> submits this Application for Review seeking a reversal of Order DA 05-498, issued on February 25, 2005 by the Telecommunications Access Policy Division.<sup>2</sup> DA 05-498 remanded RCOE File No. SLD-148309 and Spectrum Communications Cabling Systems, Inc. ("Spectrum"), File No. SLD-148309, to the Universal Service Administrative Company ("USAC") for further consideration. In its Order, the Telecommunications Access Policy Division found it "appropriate to remand certain Requests for Review of commitment adjustment decisions to USAC for further consideration consistent with the Commission's decision in the *Schools and Libraries Fourth Report and Order*" which simply clarifies that recovery of schools and libraries funds disbursed in violation of an applicable statute or a rule should be directed to the entity that is responsible for the statutory or rule violation.

RCOE is unfamiliar with the other matters globally addressed by DA 05-498.<sup>3</sup> As applied to RCOE and Spectrum, however, the only question on remand would be which party was responsible for the alleged error in the valuation of trade-in equipment that was accepted by Spectrum, the service provider, for the non-discounted share of services provided.

The Universal Service Administrative Company, Schools and Libraries Division ("USAC/SLD" or "SLD") asserts the rule that the valuation of the trade-in equipment must be

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<sup>1</sup> 47 C.F.R. Section 1.115.

<sup>2</sup> *Requests for Review of the Decision of the Universal Service Administrator*, File No. SLD-148309, CC Docket 02-6, Order, DA 05-498 (rel. February 25, 2005).

<sup>3</sup> In addition to the RCOE and Spectrum Communications Cabling Services, Inc. Files, DA 05-498 also responds to Requests for Review of the Decision of the Universal Service Administrator filed by ATEK Construction, Inc. – Los Angeles Unified School District (File No. SLD 153005); SBC-Illinois and Ameritech Advanced Data Services, Inc. – Harvey Public School District, Harvey, Illinois (File No. SLD 190697); Southwestern Bell Telephone Company – Education Service Center – Region 1, Edinburg, Texas (File No. SLD 2002704); Verizon New Jersey, Inc. – Dar Al-Hikmah Elementary School, Prospect Park, New Jersey (File No. SLD 310459); Schools and Libraries Universal Support Mechanism, CC Docket No. 02-06.

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based on the fair market value of the equipment and that the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year.<sup>4</sup> Under this rule, USAC/SLD asserts that the trade-in equipment at issue was over-valued because it was valued on a date prior to the beginning of the funding year which in this case is July, 1999.

Spectrum does not deny that it valued the equipment as of March, 1999, a date prior to the beginning of the funding year. Spectrum has argued that it is inherently unfair for USAC/SLD to seek recovery for an incorrect determination of the valuation date because no program rule of FCC guidance on this issue existed at the time the transaction occurred and the SLD neither announced a rule nor sought guidance from the FCC on this issue until four years after the transaction. While there may be merit to Spectrum's argument that no recovery should be sought on fairness grounds, there is no dispute that Spectrum admitted being the party with first hand knowledge of the actual pieces of equipment in question, had superior knowledge as to appropriate fair market value for the equipment, and was the party that determined and assigned the value to the equipment as of March, 1999.

USAC has already confirmed as much. In its Administrator's Decision on Appeal dated July 1, 2004, USAC clarifies it considered Spectrum's arguments and denied them in full.<sup>5</sup> Consequently, a remand is unnecessary in this case both because Spectrum has admitted, and USAC has already determined, consistent with the direction set forth in the Fourth Report and Order, that Spectrum was the responsible party for determining the value of the property at the

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<sup>4</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company to Elliott Duchon, ROP-Riverside, (October 3, 2003) (on file with Schools and Libraries Division, Universal Service Administrative Company). A true and correct copy of the USAC/SLD letter is attached and hereafter referred to as Exhibit "A."

<sup>5</sup> Letter from Universal Service Administrative Company, Schools and Libraries Division to Pierre Pendergrass, Spectrum Communications Cabling, Inc. (July 1, 2004) (on file with Schools and Libraries Division, Universal Service Administrative Company). A true and correct copy of the Administrator's Decision is attached and hereafter referred to as Exhibit "B."

time of trade-in.

Accordingly, RCOE seeks a reversal of DA 05-498 and a finding that as that Order applies to RCOE and Spectrum, there is no need for USAC to reconsider the party responsible for the applicable rule violation at issue.

## **II. STATEMENT OF FACTS**

RCOE is a governmental agency which, among other duties, provides fiscal oversight for 23 school districts within Riverside County. (See Cal. Educ. Code § 1000 *et seq.*) As part of this fiscal oversight, RCOE assists constituent school districts in acquiring federal and state funding, including participation in the federal "E-Rate" Program which provides eligible schools and libraries funding and discounts on products and the costs of telecommunications services, internet access and internal connections.

### **A. RCOE's Solicitation for E-Rate Proposals**

RCOE formed a consortium of its member school districts for the purpose of applying for E-Rate Program discounts in the 1999-2000 funding year. On or about March 9, 1999, RCOE filed a Form 470 Application with the SLD, which served to solicit proposals from prospective service providers for a range of eligible E-Rate products and services.

### **B. Spectrum's Determination of the Fair Market Value Rate**

After examining existing equipment which RCOE consortium members intended to trade-in to Spectrum for the purpose of providing its E-Rate matching funds, Spectrum determined the fair market value of the equipment to be \$1,813,505.83. (Letter from Pierre F. Pendergrass, General Counsel, Spectrum Communications Cabling Inc., to Schools and Libraries Division (December 2, 2003) (on file with Schools and Libraries Division, Universal Services Administrative Company) at 2.) Spectrum professes it calculated the fair market value of RCOE's equipment based upon its considerable expertise in the purchase and sale of new and used technology equipment in the Riverside market. (Letter from Pierre Pendergrass, General



Counsel, Spectrum Communications Cabling Inc., to Federal Communications Commission (August 30, 2004) (on file with Federal Communications Commission) at 4).

Specifically, Spectrum claims that it: (i) had previously sold and installed the specific pieces of equipment at issue; (ii) was knowledgeable about the manner in which the equipment had been used and maintained; (iii) was knowledgeable about the training and expertise of the staff who had been using the equipment; and (iv) most importantly, had detailed knowledge about the identity and needs of potential buyers of the specific pieces of equipment in question. (Letter from Pendergrass to Federal Communications Commission of 8/30/04 at 4).

**C. RCOE's Selection of Spectrum as its Service Provider**

After determining the fair market value of the equipment, Spectrum then submitted a bid proposal to the Form 470. (Letter from Pendergrass to Schools and Libraries Division of 12/02/03 at 2). Spectrum asserts that after carefully considering the type, amount and condition of the equipment held by the RCOE consortium, it developed a proposal that would enable the consortium members to meet their technology plan objectives while, at the same time, avoid a cash outlay. Spectrum also asserts that RCOE reviewed this proposal and found it to be the most cost-effective response to its Form 470. (Letter from Pendergrass to Schools and Libraries Division of 12/02/03 at 6).

RCOE concurs that its decision to select Spectrum was based on the fact that Spectrum had experience as an E-Rate service provider and had knowledge of the specific technological needs of the school districts in the consortium. More importantly, the decision was based on the fact that Spectrum counseled RCOE and the participating school districts that the districts could trade-in, and Spectrum would accept, existing equipment<sup>6</sup> for the new equipment.

Because Spectrum's bid proposal was the most advantageous to RCOE, RCOE filed a

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<sup>6</sup> Any equipment traded-in was not purchased with Universal Service Funds (i.e., non-E-Rate funded equipment.).  
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Form 471 documenting RCOE's acceptance of Spectrum's proposal and its selection of Spectrum as its service provider, which was approved as submitted. Sixteen school districts took advantage of Spectrum's offer to credit trade-in equipment value to meet some or all of their identified 33% match obligation.<sup>7</sup>

**D. USAC Determination of Erroneous Fair Market Value Rate**

In October 2001, USAC engaged Arthur Andersen LLP to conduct an audit which was undertaken with the assistance of RCOE, the school districts and Spectrum. As a result of the audit, Arthur Andersen LLP questioned the trade-in value placed on the used equipment. Spectrum then commissioned an independent appraisal of the trade-in equipment. Based on the Arthur Andersen LLP audit and using July 1, 1999 appraisal values from the appraisal report, on or about October 3, 2003, RCOE and Spectrum received a letter from USAC/SLD seeking recovery of \$707,521.34 which represents the difference between the equipment trade-in value as determined by Spectrum, and the trade-in value determined to apply under the SLD rule that such value must be based on the fair market value of the equipment on the date the service

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<sup>7</sup> The 16 school districts are as follows: (1) Alvord Unified School District; (2) Banning Unified School District; (3) Corona/Norco Unified School District; (4) Desert Sands Unified School District; (5) Hemet Unified School District; (6) Jurupa Unified School District; (7) Lake Elsinore Unified School District; (8) Menifee Unified School District; (9) Moreno Valley Unified School District; (10) Murrieta Valley Unified School District; (11) Palm Springs Unified School District; (12) Palo Verde Unified School District; (13) Perris School District; (14) Romoland School District; (15) Temecula Valley Unified School District; and (16) Val Verde Unified School District. RCOE was also informed that Corona/Norco Unified School District and Jurupa Unified School District would both trade in old equipment and make a cash payment to meet their 33% match amounts. The USAC Funding Commitment Decision Letter stated that each district would be responsible for paying 33% of the technology installation, while the other 67% would be paid directly to the service provider. A true and correct copy of the USAC Funding Commitment Decision Letter is attached and hereafter referred to as Exhibit "C".

<sup>9</sup> Letter of Rina M. Gonzales, Attorney, Riverside County Office of Education, to Schools and Libraries Division (December 2, 2003) (on file with Schools and Libraries Division, Universal Service Administrative Company) and Letter of Pierre Pendergrass, General Counsel, Spectrum Communications Cabling Inc., to Schools and Libraries Division (December 2, 2003) (on file with Schools and Libraries Division, Universal Service Administrative Company). A true and correct copy of the RCOE appeal letter is attached and hereafter referred to as Exhibit "D". A true and correct copy of the Spectrum appeal letter is attached and hereafter referred to as Exhibit "E".

provider took possession of the equipment, but not earlier than the beginning of the funding year.

(See Exhibit "A").

In this letter, USAC/SLD asserted that the Universal Service Funding provided to the 16 districts listed above was "erroneously disbursed" and provided the following explanation to each district:

**Disbursed Funds Recovery Explanation:** After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of [dollar amount differs for each district] is required. A beneficiary audit discovered that the service provider accepted trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date that service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only [dollar amount differs for each district], which is [dollar amount differs for each district] less than the non-discounted share of [dollar amount differs for each district] that the applicant was obligated to pay. Since the applicant did not cover [dollar amount differs for each district] of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to [dollar amount differs for each district]. As a result this amount of [dollar amount differs for each district] determined to have been erroneously disbursed and must now be recovered. (Exhibit "A", at pp. 5-22.)

**E. Appeals of USAC Determination that Fair Market Value in this Instance Should be Calculated as of July 1, 1999, as opposed to March, 1999 the date used by Spectrum**

In December, 2003, RCOE and Spectrum filed separate appeals to USAC/SLD, as described *infra*.<sup>9</sup> Spectrum appealed the SLD's decision on the grounds that it was misguided for USAC/SLD to determine that the appropriate valuation date for trade-in equipment is the date the service provider took possession of the equipment but no earlier than the beginning of the funding year, or in this case, July 1, 1999. Spectrum argued that all trade-in equipment should be valued on or around March 1, 1999, the date by which they calculated the fair market value of the trade-in property at issue in this matter. (Exhibit "E").

USAC issued an Administrator's Decision on Appeal – Funding Year 1999-2000 ("Administrator's Decision") on July 1, 2004. (Letter from Universal Service Administrative Company to Pierre F. Pendergrass, Spectrum Communications Cabling Services, Inc., (July 1, 2004) (on file with Universal Services Administrative Company, Schools and Libraries Division.) (Exhibit "B"). The Administrator's Decision explained that Spectrum's appeal was denied in full, finding that the factual background supported the SLD's decision and SLD appropriately valued the trade-in equipment using the July 1, 1999 valuation date. (Exhibit "B").

After receiving a courtesy copy of the Administrator's Decision, counsel for RCOE contacted counsel for USAC to verify its understanding of the outcome announced in the Decision.<sup>10</sup> Counsel for USAC confirmed that USAC would only be seeking recovery from Spectrum. (Exhibit "F"). On August 30, 2004, Spectrum filed a Request for Review to the FCC ("Spectrum Appeal #2").<sup>11</sup> After reviewing Spectrum's Request, RCOE sent a letter to the FCC Office of the Secretary on October 1, 2004, requesting that RCOE be allowed to participate in the appeal process if USAC was considering changing its previous position.<sup>12</sup>

As described above, on February 28, 2005, the FCC issued a memorandum accompanied by FCC Order No. DA 05-498 to multiple parties, including RCOE and Spectrum.<sup>13</sup> The FCC instructed that RCOE's October 1, 2004 letter, which it apparently was considered as a "Request for Review," and Spectrum's appeal be remanded to USAC for further review consistent with the Fourth Report and Order which serves to clarify that recovery of schools and libraries funds

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<sup>10</sup> See Declaration of Rina M. Gonzales attached and hereafter referred to as Exhibit "F."

<sup>11</sup> Letter from Pierre Pendergrass, General Counsel, Spectrum Communications Cabling, Inc., to Federal Communications Commission (August 30, 2004) (on file with Federal Communications Commission). A true and correct copy of the Spectrum Appeal #2 is attached and referred to hereafter as Exhibit "G".

<sup>12</sup> Letter from Rina M. Gonzales, Attorney, Riverside County Office of Education, to Federal Communications Commission (October 1, 2004) (on file with Federal Communications Commission). A true and correct copy is attached and hereafter referred to as Exhibit "H".

<sup>13</sup> A true and correct copy of the memo and FCC Decision No. DA 05-498 is attached and hereafter referred to as Exhibit "I."

disbursed in violation of an applicable statute or a rule should be directed to the entity that is responsible for the statutory or rule violation.

RCOE is filing this current Application for Review on the grounds that the Telecommunications Access Policy Division has committed an erroneous finding as to an important or material question of fact, and seeks a determination that there is no need to remand this matter to USAC/SLD on the issue of what party is responsible for the statutory or rule violation at issue, since Spectrum admits that it was responsible for calculating the fair market value of the trade-in equipment, and USAC has already heard, and denied Spectrum's appeal on the grounds that USAC exceeded its authority in adopting a new policy without FCC Guidance that would be applied retroactively to Spectrum.

### **III. QUESTIONS PRESENTED FOR REVIEW**

#### **A. Whether Spectrum Can Be Identified, Without Further Consideration by USAC, as the Party Responsible for the Rule Requiring that Fair Market Value Be Calculated on the Date a Service Provider Takes Possession of Trade-In Equipment, but not Earlier than the Beginning of the Fund Year.**

The only basis upon which USAC seeks recovery of funds is on the grounds that trade-in equipment was assigned an improper fair market value which led to uncovered charges that the SLD now attempts to recover. While the Fourth Report and Order has clarified that the USAC/SLD seek recovery against schools *when the school is responsible for the statutory or rule violation*, it is unnecessary to remand the RCOE and Spectrum files for further consideration by USAC/SLD since it is already clear that Spectrum is the sole party responsible for the valuation.

#### **1. Spectrum Admits They Were the Party Responsible for Calculating the Fair Market Value of Trade-In Equipment**

There is no dispute that Spectrum calculated the fair market value of all trade-in equipment at issue and represented to RCOE how this would determine RCOE's obligations under the E-Rate Program. In fact, to support its argument that it was in the best position to

make such a determination, it has asserted before USAC that: "Spectrum, based upon its considerable expertise in the purchase and sale of new and used technology equipment, calculated the fair market value of Riverside's trade-in equipment as of March 1999." (Exhibit "G" at 1). Spectrum may have a fair argument that the SLD and USAC exceeded their authority when they established a SLD Program rule regarding the timing of fair market valuations for trade-in equipment to E-Rate services that were provided years earlier, however, this does not change the fact that Spectrum was the party responsible for calculating the value of the trade-in equipment, which is the only issue for remand.

Spectrum's own factual assertions, in both of its appeals, demonstrate that it is the responsible party in this matter. Spectrum admitted that it calculated the fair market value of RCOE's equipment based upon its previous experience and has also argued that Spectrum's valuation of the equipment at the time the parties entered into their agreement in March of 1999 was subsequently substantiated by an independent third-party appraisal. (See Exhibit "G" at i, 4, 6, 7, 9, 10, 19; see also Exhibit "E" at 2, 3, 5, 6, 8, 9). These direct admissions are significant as USAC's sole reason for seeking recovery of allegedly erroneous disbursed monies is due to the timing of the valuation.

Spectrum has also freely stated that its fair market valuation created the best proposal for RCOE. As an experienced technology service provider, Spectrum assisted the districts in determining what technology was required, provided pricing for that technology as a California's Multiple Award Schedule (CMAS) vendor, and provided what it represented to be the fair market value of all trade-in equipment.

Given the very short time frame available to proceed with the project for the school districts, RCOE and the school districts relied on Spectrum's experience implementing the district's technology goals, awareness of the district's existing technology, knowledge of the fair market value of that technology, and evaluation of district needs regarding upgrades. Spectrum

was selected by RCOE to be the service provider in part due to Spectrum's counsel that the school districts could trade-in, and Spectrum would accept existing equipment for the new equipment, and that based upon the fair market value they determined, such trade-ins would meet some or all of their required 33% match obligation.

RCOE also relied on Spectrum's knowledge and representations as to the value of the trade-in equipment when they made their ultimate decisions as to what new equipment to purchase and when they determined the additional funding, if any, that was necessary to secure that equipment. Finally, RCOE relied on the information provided by Spectrum in preparing the application on behalf of the school districts and representing that the school districts had secured access to all resources necessary to pay the discounted charges for eligible services.

**2. USAC Has Already Considered Spectrum's Arguments Supporting its Position as to Why Spectrum's Fair Market Value Calculation should be upheld**

The request for remand, set forth in DA Order No. 05-498, is not necessary with respect to the present case because USAC has already been afforded an opportunity to pass on the issue of which party is responsible in this case. USAC's decision firmly rejects all of Spectrum's arguments and found that Spectrum was the responsible party. Specifically, USAC has already evaluated the merits of Spectrum's arguments and concluded that Spectrum violated the USAC Program rule that the valuation of trade-in equipment must be based on the fair market value of the equipment, and that the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the fund year. (Exhibit "A"). USAC concluded that Spectrum violated this rule because Spectrum valued the trade-in equipment prior to the commencement of the funding year and prior to the time Spectrum took possession of the equipment. (See Exhibit "B").

The Administrator's Decision carefully considered the arguments advanced by Spectrum, including the following: (1) Spectrum's assertion that "the SLD determination in this matter is

misguided and SLD should cease its attempt to recover funds disbursed"; (2) Spectrum's argument stating "that it is inherently unfair to seek recovery from Spectrum for an incorrect determination of the valuation date because no program rule of FCC guidance on this issue existed at the time the transaction occurred"; (3) Spectrum's assertion that "although the independent appraisal Spectrum provided did value equipment in the amounts indicated in the [Recovery of Erroneously Disbursed Funds] Letter, this appraisal is not more authoritative than Spectrum's opinion because Spectrum had first hand knowledge of the actual pieces of equipment in question"; and (4) Spectrum's further claim that "the [independent] appraisal is less reliable than Spectrum's opinion at the time it received the equipment because the appraisal is based upon information that is almost four years old." (See Exhibit "B"). The Administrator cited to all of these arguments, its review of the appeal letter and relevant documentation, and still found that the facts supported the SLD's decision to seek recovery for the subject funds. (Id.).

After considering these arguments, the Administrator still reasoned that Spectrum's valuation date violated the Program rule, as "the trade-in amount was based on the value of the equipment at the time of the contract, which was before the start of the funding year and several months before Spectrum was set to take possession of the equipment." (Exhibit "B"). Further, the decision also pointed out that "although the agreement was executed in March 1999, the equipment was not transferred until after the start of the Funding Year." (Id.) The Administrator concluded that "it [was] appropriate for SLD to value the equipment as of July 1, 1999." (Id.) The Administrator also emphasized that USAC must make an effort to ensure that there is "no waste, fraud and abuse." (Id.)

**3. The only entity addressed by the USAC/SLD was Spectrum.**

RCOE finds it significant that this decision, was the only response provided to the letters of appeal, filed by RCOE and Spectrum, separately, on December 2, 2003, (See Exhibits "D"



and "E"), and that the decision was only addressed to Spectrum's legal counsel, Pierre Pendergrass, with a courtesy copy was provided to both RCOE and RCOE's legal counsel. (Exhibit "B".)

RCOE, however, did not simply rely on the holding provided in the Administrator's Decision. Upon receipt of the Administrator's Decision, RCOE's legal counsel contacted a USAC attorney to confirm USAC's position that it would not seek recovery from RCOE because it had determined Spectrum to be the responsible party, and whether RCOE would be required to participate in any further appeals. (Gonzales Decl. ¶ 2.) RCOE was informed by a USAC attorney that RCOE's December 2, 2003 letter was not considered a true "appeal" as it had requested confirmation that recovery would be sought solely from Spectrum. (*Id.*; see also Exhibit "B" at pp. 2 and 7) Moreover, the USAC attorney stated that USAC would not provide a decision letter to RCOE. (*Id.*) Thus, while USAC had the opportunity to review a letter of appeal from Spectrum, as well as RCOE, it determined that its ruling would apply to Spectrum as the responsible party. This decision effectively dismissed RCOE from the dispute.

**4. The Clarification Set forth in the Schools and Libraries Fourth Report and Order Does Not Alter USAC's Previous Conclusion that Spectrum is the Responsible Party in this Matter.**

Through Order DA 05-498, the Telecommunications Access Policy Division remanded RCOE File No. SLD-148309 and Spectrum Communications Cabling Systems, Inc. ("Spectrum"), File No. SLD-148309, since USAC may now consider the fact that recovery of schools and libraries funds disbursed in violation of an applicable statute or rule can be sought from schools and libraries. However while the Fourth Report and Order clarifies this with more specificity, such a policy is essentially just an extension of USAC's practice already in existence of holding the party that has committed the statutory or rule violation be responsible. For example, when USAC has found that a school district has not followed the required competitive bidding processes, or has failed to make a bona fide request for services, or has failed in its

responsibility to ensure that the service provider it had contracted with was indeed a telecommunications provider whose status as a telecommunications provider would be appropriately reflected in its application materials, then in those situations, schools districts can be denied funding because specifically they have violated the rule requiring such a process to be followed.<sup>14</sup>

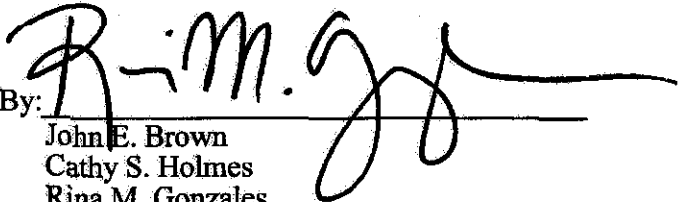
None of these potential rule violations for which school districts are responsible are currently before the USAC. Here again, the only rule at issue is SLD's Program rule that trade-in equipment must be valued at the time the equipment changed hands or on the first date of the applicable E-Rate funding year. RCOE had no involvement with the determination of the fair market value, as this was within the sole responsibility of Spectrum.

#### IV. CONCLUSION

For these reasons, RCOE respectfully requests that the FCC reverse DA 05-498 and find that, Spectrum's own contentions on appeal as well as the USAC Administrator's collectively have already determined that Spectrum was the party responsible for the rule violation at issue.

Dated: April 26, 2005

BEST BEST & KRIEGER LLP

By: 

John E. Brown  
Cathy S. Holmes  
Rina M. Gonzales  
Attorneys for Riverside County  
Office of Education

<sup>14</sup>See Request for Review of the Decision of the Universal Service Administrator by Penn Hills School District Pittsburgh, Pennsylvania, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD 174801, CC Docket Nos. 96-45 and 97-21, Order, DA 02-85 (rel. January 14, 2002). See also Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service, SPIN-143006149, CC Docket No. 96-45, Order, FCC 00-167, (rel. May 23, 2000).

RCOE  
EXHIBIT A



Universal Service Administrative Company  
Schools & Libraries Division

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**RECOVERY OF ERRONEOUSLY DISBURSED FUNDS**

October 3, 2003

MR. ELLIOTT DUCHON  
R O P - RIVERSIDE COUNTY  
3939 THIRTEENTH STREET,  
RIVERSIDE, CA 92502

Re:

Funding Year 1999 -2000  
Form 471 Application Number: 148309

Dear Applicant:

Reviews of Schools and Libraries Program disbursements occasionally reveal that funds were disbursed in error. Such discoveries may arise out of our periodic audits, attempts by applicants to reduce a funding commitment below the amount already disbursed, or other investigations resulting from our program compliance procedures. For example, funds may be disbursed in error when:

- Services were billed but were not delivered
- Services were billed in excess of the services delivered
- Services were returned but an appropriate refund to SLD was not made

The SLD has determined that the funds detailed on the attached FUNDING DISBURSEMENT SYNOPSIS were disbursed in error. This synopsis includes the specific funding requests, amounts, and reasons for recovery by Funding Request Number (FRN). The SLD must now recover the amount that was disbursed in error.

## FUNDING DISBURSEMENT SYNOPSIS

On the pages following this letter, we have provided a Funding Disbursement Synopsis for the Form 471 application cited above. The enclosed report includes a list of the FRNs from this application for which recovery of erroneously disbursed funds is necessary.

Immediately preceding the Funding Disbursement Report, you will find a guide that defines each line of the Report. The SLD is also sending this information to the applicant named above.

### TO APPEAL THIS DECISION

If you wish to appeal the decision indicated in this letter, your appeal must be RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify which Recovery Of Erroneously Disbursed Funds you are appealing. Indicate the funding request number and date of the Disbursed Funds Recovery letter. Your letter of appeal must also include the applicant name, the Form 471 Application Number, and the Billed Entity Number from the top of your letter.
3. When explaining your appeal, include the precise language or text that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, the SLD will be able to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by calling the Client Service Bureau. We encourage the use of either the e-mail or fax filing options to expedite filing your appeal.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be RECEIVED BY THE FCC WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER. Failure to meet this requirement will result in automatic dismissal of your appeal. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by calling the

RCOE  
Exhibit A  
Page 2 of 22

Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options because of substantial delays in mail delivery to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

Schools and Libraries Division  
Universal Service Administrative Company

## A GUIDE TO THE FUNDING DISBURSEMENT SYNOPSIS

Attached to this letter will be a report for each funding request from the application cited at the top of this letter for which a Recovery of Erroneously Disbursed Funds is required. We are providing the following definitions.

- **FUNDING REQUEST NUMBER (FRN):** A Funding Request Number is assigned by the SLD to each request in Block 5 of your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.
- **SPIN (Service Provider Identification Number):** A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support programs.
- **SERVICE PROVIDER:** The legal name of the service provider.
- **CONTRACT NUMBER:** The number of the contract between the applicant and the service provider. This will be present only if a contract number was provided on the Form 471.
- **SERVICES ORDERED:** The type of service ordered from the service provider, as shown on Form 471.
- **SITE IDENTIFIER:** The Entity Number listed on Form 471 for "site specific" FRNs.
- **BILLING ACCOUNT NUMBER:** The account number that was established for billing purposes. This will be present only if a Billing Account Number was provided on the Form 471.
- **FUNDING COMMITMENT:** This represents the total amount of requested funding that the SLD committed to this FRN.
- **FUNDS DISBURSED TO DATE:** This represents the total funds that have been paid to you for this FRN.
- **FUNDS TO BE RECOVERED:** This represents the amount of Erroneously Funds Disbursed to Date. These erroneously disbursed funds will have to be recovered.
- **DISBURSED FUNDS RECOVERY EXPLANATION:** This entry provides a description of the reason SLD is seeking the recovery.

## Funding Disbursement Synopsis for Application Number: 148309

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Funding Request Number 299376                      SPIN: 143010165  
Service Provider: Spectrum Communications Cabling Services, Inc.  
Contract Number: BANUSD  
Services Ordered: INTERNAL CONNECTNS\_S  
Site Identifier:  
Billing Account Number:  
Funding Commitment: \$79,113.39  
Funds Disbursed to Date: \$103,272.47  
Funds to be Recovered: \$24,159.08

### Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$24,159.08 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$38,966.30, which is \$11,899.24 less than the non-discounted share of \$50,865.54 that the applicant was obligated to pay. Since the applicant did not cover \$11,899.24 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$24,159.08. As a result this amount of \$24,159.08 determined to have been erroneously disbursed and must now be recovered.



Funding Request Number 299377      SPIN: 143010165  
Service Provider: Spectrum Communications Cabling Services, Inc.  
Contract Number: PJUSD  
Services Ordered: INTERNAL CONNECTNS\_S  
Site Identifier:  
Billing Account Number:  
Funding Commitment: \$70,868.99  
Funds Disbursed to Date: \$86,746.08  
Funds to be Recovered: \$15,877.09

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$15,877.09 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only 34,905.62, which is \$7,820.06 less than the non-discounted share of \$42,725.68 that the applicant was obligated to pay. Since the applicant did not cover \$7,820.06 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$15,877.09. As a result this amount of \$15,877.09 was determined to have been erroneously disbursed and must now be recovered.

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Funding Request Number 299378                      SPIN: 143010165  
Service Provider: Spectrum Communications Cabling Services, Inc.  
Contract Number: PELEM  
Services Ordered:        INTERNAL CONNECTNS\_S  
Site Identifier:  
Billing Account Number:  
Funding Commitment:                      \$21,985.08  
Funds Disbursed to Date:                      \$44,070.38  
Funds to be Recovered:                      \$22,085.30

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$22,085.30 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$10,828.47, which is \$10,877.84 less than the non-discounted share of \$21,706.31 that the applicant was obligated to pay. Since the applicant did not cover \$10,877.84 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$22,085.30. As a result this amount of \$22,085.30 was determined to have been erroneously disbursed and must now be recovered.

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Funding Request Number 299379                      SPIN: 143010165  
Service Provider: Spectrum Communications Cabling Services, Inc.  
Contract Number: TUSD  
Services Ordered:        INTERNAL CONNECTNS\_S  
Site Identifier:  
Billing Account Number:  
Funding Commitment:                      \$144,486.12  
Funds Disbursed to Date:                      \$179,000.95  
Funds to be Recovered:                      \$34,514.83

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$34,514.83 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$71,164.80, which is \$16,999.85 less than the non-discounted share of \$88,164.65 that the applicant was obligated to pay. Since the applicant did not cover \$16,999.85 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$34,514.83. As a result this amount of \$34,514.83 was determined to have been erroneously disbursed and must now be recovered.

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Funding Request Number 299381                      SPIN: 143010165  
Service Provider: Spectrum Communications Cabling Services, Inc.  
Contract Number: MUSD  
Services Ordered:        INTERNAL CONNECTNS \_S  
Site Identifier:  
Billing Account Number:  
Funding Commitment:                                      \$90,105.93  
Funds Disbursed to Date:                                \$125,307.65  
Funds to be Recovered:                                  \$35,201.72

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$35,201.72 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$44,380.53, which is \$17,338.16 less than the non-discounted share of \$61,718.69 that the applicant was obligated to pay. Since the applicant did not cover \$17,338.16 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$35,201.72. As a result, this amount of \$35,201.72 was determined to have been erroneously disbursed and must now be recovered.

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Funding Request Number 299382                      SPIN: 143010165  
Service Provider: Spectrum Communications Cabling Services, Inc.  
Contract Number: JUSD  
Services Ordered:        INTERNAL CONNECTNS\_S  
Site Identifier:  
Billing Account Number:  
Funding Commitment:                      \$335,108.01  
Funds Disbursed to Date:                      \$395,168.80  
Funds to be Recovered:                      \$60,060.79

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$60,060.79 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$165,053.20, which is \$29,582.18 less than the non-discounted share of \$194,635.38 that the applicant was obligated to pay. Since the applicant did not cover \$29,582.18 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$60,060.79. As a result, this amount of \$60,060.79 was determined to have been erroneously disbursed and must now be recovered.

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Funding Request Number 299355                      SPIN: 143010165  
Service Provider: Spectrum Communications Cabling Services, Inc.  
Contract Number: PSUSD  
Services Ordered: INTERNAL CONNECTNS\_S  
Site Identifier:  
Billing Account Number:  
Funding Commitment:                      \$141,737.98  
Funds Disbursed to Date:                      \$173,492.15  
Funds to be Recovered:                      \$31,754.17

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$31,754.17 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$69,811.25, which is \$15,640.11 less than the non-discounted share of \$85,451.36 that the applicant was obligated to pay. Since the applicant did not cover \$15,640.11 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$31,754.17. As a result, this amount of \$31,754.17 was determined to have been erroneously disbursed and must now be recovered.

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Funding Request Number 299356                      SPIN: 143010165  
Service Provider: Spectrum Communications Cabling Services, Inc.  
Contract Number: CNUSD  
Services Ordered: INTERNAL CONNECTNS\_S  
Site Identifier:  
Billing Account Number:  
Funding Commitment:                      \$277,979.70  
Funds Disbursed to Date:                      \$335,966.71  
Funds to be Recovered:                      \$57,987.01

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$57,987.01 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$136,915.37, which is \$28,560.77 less than the non-discounted share of \$165,476.14 that the applicant was obligated to pay. Since the applicant did not cover \$28,560.77 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$57,987.01. As a result, this amount of \$57,987.01 was determined to have been erroneously disbursed and must now be recovered.

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Funding Request Number 299359      SPIN: 143010165  
Service Provider: Spectrum Communications Cabling Services, Inc.  
Contract Number: SJUSD  
Services Ordered: INTERNAL CONNECTNS S  
Site Identifier:  
Billing Account Number:  
Funding Commitment: \$65,372.72  
Funds Disbursed to Date: \$75,728.49  
Funds to be Recovered: \$10,355.77

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$10,355.77 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$32,198.50, which is \$5,100.61 less than the non-discounted share of \$18,993.02 that the applicant was obligated to pay. Since the applicant did not cover \$5,100.61 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$10,355.77. As a result this amount of \$10,355.77 was determined to have been erroneously disbursed and must now be recovered.



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Funding Request Number 299361                      SPIN: 143010165  
Service Provider: Spectrum Communications Cabling Services, Inc.  
Contract Number: VVSD  
Services Ordered:        INTERNAL CONNECTNS\_S  
Site Identifier:  
Billing Account Number:  
Funding Commitment:                      \$183,542.51  
Funds Disbursed to Date:                      \$312,606.76  
Funds to be Recovered:                      \$129,064.25

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$129,064.25 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$90,401.53, which is \$63,568.96 less than the non-discounted share of \$153,970.49 that the applicant was obligated to pay. Since the applicant did not cover \$63,568.96 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$129,064.25. As a result this amount of \$129,064.25 was determined to have been erroneously disbursed and must now be recovered.

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Funding Request Number 299363                      SPIN: 143010165  
Service Provider: Spectrum Communications Cabling Services, Inc.  
Contract Number: PVUSD  
Services Ordered:        INTERNAL CONNECTNS\_S  
Site Identifier:  
Billing Account Number:  
Funding Commitment:                                      \$70,868.99  
Funds Disbursed to Date:                                \$86,746.08  
Funds to be Recovered:                                  \$15,877.09

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$15,877.09 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$34,905.62, which is \$7,820.06 less than the non-discounted share of \$42,725.68 that the applicant was obligated to pay. Since the applicant did not cover \$7,820.06 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$15,877.09. As a result, this amount of \$15,877.09 was determined to have been erroneously disbursed and must now be recovered.

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Funding Request Number 299365                      SPIN: 143010165  
Service Provider: Spectrum Communications Cabling Services, Inc.  
Contract Number: HUSD  
Services Ordered: INTERNAL CONNECTNS\_S  
Site Identifier:  
Billing Account Number:  
Funding Commitment: \$160,974.92  
Funds Disbursed to Date: \$212,053.73  
Funds to be Recovered: \$51,078.81

**Disbursed Funds Recovery Explanation:**

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$51,078.81 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$79,286.16, which is \$25,158.21 less than the non-discounted share of \$104,444.37 that the applicant was obligated to pay. Since the applicant did not cover \$25,158.21 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$51,078.81. As a result, this amount of \$51,078.81 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299367

SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: MUSD

Services Ordered: INTERNAL CONNECTNS\_S

Site Identifier:

Billing Account Number:

Funding Commitment: \$21,985.08

Funds Disbursed to Date: \$44,070.38

Funds to be Recovered: \$22,085.30

**Disbursed Funds Recovery Explanation:**

After a detailed review of documentation pertaining to this funding request, the SLD has found that a recovery of erroneously disbursed funds in the amount of \$22,085.30 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$10,828.47, which is \$10,877.84 less than the non-discounted share of \$21,706.31 that the applicant was obligated to pay. Since the applicant did not cover \$10,877.84 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$22,085.30. As a result, this amount of \$22,085.30 was determined to have been erroneously disbursed and must now be recovered.

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Funding Request Number 299368                      SPIN: 143010165  
Service Provider: Spectrum Communications Cabling Services, Inc.  
Contract Number: RSD  
Services Ordered:        INTERNAL CONNECTNS\_S  
Site Identifier:  
Billing Account Number:  
Funding Commitment:                      \$19,236.94  
Funds Disbursed to Date:                      \$38,561.58  
Funds to be Recovered:                      \$19,324.64

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$19,324.64 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$9,474.91, which is \$9,518.11 less than the non-discounted share of \$18,993.02 that the applicant was obligated to pay. Since the applicant did not cover \$9,518.11 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$19,324.64. As a result, this amount of \$19,324.64 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299370

SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: DSUSD

Services Ordered: INTERNAL CONNECTNS\_S

Site Identifier:

Billing Account Number:

Funding Commitment: \$266,987.16

Funds Disbursed to Date: \$313,931.52

Funds to be Recovered: \$46,944.36

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$46,944.36 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$131,501.14, which is \$23,121.85 less than the non-discounted share of \$154,622.99 that the applicant was obligated to pay. Since the applicant did not cover \$23,121.85 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$46,944.36. As a result this amount of \$46,944.36 was determined to have been erroneously disbursed and must now be recovered.

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Funding Request Number 299371      SPIN: 143010165  
Service Provider: Spectrum Communications Cabling Services, Inc.  
Contract Number: AUSD  
Services Ordered: INTERNAL CONNECTNS\_S  
Site Identifier:  
Billing Account Number:  
Funding Commitment: \$149,982.39  
Funds Disbursed to Date: \$190,018.55  
Funds to be Recovered: \$40,036.16

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$40,036.16 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$73,871.92, which is \$19,719.31 less than the non-discounted share of \$93,591.23 that the applicant was obligated to pay. Since the applicant did not cover \$19,719.31 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$40,036.16. As a result, this amount of \$40,036.16 was determined to have been erroneously disbursed and must now be recovered.

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Funding Request Number 299372                      SPIN: 143010165  
Service Provider: Spectrum Communications Cabling Services, Inc.  
Contract Number: JUSD  
Services Ordered: INTERNAL CONNECTNS\_S  
Site Identifier:  
Billing Account Number:  
Funding Commitment: \$163,723.06  
Funds Disbursed to Date: \$217,562.53  
Funds to be Recovered: \$53,839.47

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$53,839.47 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$80,639.72, which is \$26,517.94 less than the non-discounted share of \$107,157.66 that the applicant was obligated to pay. Since the applicant did not cover \$26,517.94 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$53,839.47. As a result, this amount of \$53,839.47 was determined to have been erroneously disbursed and must now be recovered.



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Funding Request Number 299373                      SPIN: 143010165  
Service Provider: Spectrum Communications Cabling Services, Inc.  
Contract Number: LEUSD  
Services Ordered:        INTERNAL CONNECTNS\_S  
Site Identifier:  
Billing Account Number:  
Funding Commitment:                      \$147,234.25  
Funds Disbursed to Date:                      \$184,509.75  
Funds to be Recovered:                      \$37,275.50

**Disbursed Funds Recovery Explanation:**

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$37,275.50 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$72,518.36, which is \$18,359.58 less than the non-discounted share of \$90,877.94 that the applicant was obligated to pay. Since the applicant did not cover \$18,359.58 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$37,275.50. As a result, this amount of \$37,275.50 was determined to have been erroneously disbursed and must now be recovered.

**RCOE**  
**EXHIBIT B**



Universal Service Administrative Company  
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 1999-2000

July 1, 2004

Pierre F. Pendergrass  
Spectrum Communications Cabling Services, Inc.  
226 North Lincoln Avenue  
Corona, CA 92882

RECEIVED

JUL 06 2004

Re: R O P Riverside County

BEST BEST & KRIEGER

Re: Billed Entity Number: 143743  
471 Application Number: 148309  
Funding Request Number(s): 299355, 299356, 299359, 299361, 299363,  
299365, 299367, 299368, 299370, 299371,  
299372, 299373, 299376, 299377, 299378,  
299379, 299381, 299382

Your Correspondence Dated: December 2, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision concerning your appeal of SLD's Funding Year 1999 Recovery of Erroneously Disbursed Funds (REDF) Decision for the application number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one application number, please note that for each application an appeal is submitted, a separate letter is sent.

Funding Request Number(s): 299355, 299356, 299359, 299361, 299363,  
299365, 299367, 299368, 299370, 299371,  
299372, 299373, 299376, 299377, 299378,  
299379, 299381, 299382

Decision on Appeal: **Denied in Full**  
Explanation:

- You have stated on appeal that the SLD determined that the appropriate valuation date for trade-in equipment is the date the service provider took possession of the equipment but no earlier than the beginning of the funding year, in this case July 1, 1999. You also state that the SLD has relied upon an independent appraisal that Spectrum provided in order to determine the value of the equipment on July 1, 1999. You feel that the SLD

determination in this matter is misguided and SLD should cease its attempt to recover funds disbursed. You close by stating that it is inherently unfair to seek recovery from Spectrum for an incorrect determination of the valuation date because no program rule of FCC guidance on this issue existed at the time the transaction occurred. In fact, the SLD neither announced a rule nor sought guidance from the FCC on this issue until the first quarter of 2003, four years after the transaction. You add that although the independent appraisal Spectrum provided did value the equipment in the amounts indicated in the REDF Letter, this appraisal is not more authoritative than Spectrum's opinion because Spectrum had first hand knowledge of the actual pieces of equipment in question. Further, the appraisal is less reliable than Spectrum's opinion at the time it received the equipment because the appraisal is based upon information that is almost four years old.

- Upon thorough review of the appeal letter and relevant documentation, we find that the facts support SLD's decision. An Internal Audit found that Spectrum Communications accepted a trade-in amount for the above funding requests. This is permitted under program rules because the original equipment was not purchased with program funds. After the Audit findings, the applicant argued that the calculation of the Fair Market Value (FMV) of the equipment should not be based on a 3-year straight-line depreciation schedule, and SLD accepted this presumption. However, the trade-in amount was based on the value of the equipment at the time of the contract, which was before the start of the funding year and several months before Spectrum was set to take possession of the equipment. Spectrum provided an independent appraisal indicating the FMV of the equipment as of July 1, 1999. SLD has accepted this appraisal and determined that the recovery amounts should be based on the date that Spectrum took possession of the equipment, but no earlier than the first day of the funding year. Although the agreement was executed in March 1999, you have indicated that the equipment was not transferred until after the start of Funding Year 1999. Therefore, it is appropriate for SLD to value the equipment as of July 1, 1999. In its role as program Administrator, USAC must ensure that there is no waste, fraud and abuse. Consequently, the appeal is denied.
- The FCC has directed USAC "to adjust funding commitments made to schools and libraries where disbursement of funds associated with those commitments would result in violations of a federal statute" and to pursue collection of any disbursements that were made in violation of a federal statute. *See In re Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 97-21, 96-45, FCC 99-291 ¶ 7 (rel. October 8, 1999). The FCC stated that federal law requires the Commission to "seek repayment of erroneously disbursed funds" where the disbursements would violate a federal statute. *Id.* ¶¶ 7, 1. The FCC stated that repayment would be sought "from service providers rather than schools and libraries because, unlike schools and libraries that receive discounted services, service providers actually receive disbursements of funds from the universal service support mechanism." *Id.* ¶ 9.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of

your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options., ,

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

cc: Mr. Elliott Duchon  
R O P Riverside County  
3939 Thirteenth Street  
Riverside, CA 92502

cc: Rina M. Gonzales  
Best Best & Krieger LLP  
3750 University Avenue  
Post Office Box 1028  
Riverside, CA 92502-1028

**RCOE  
EXHIBIT C**



Box 125 - Correspondence Unit  
100 South Jefferson Road  
Whippany, NJ 07981  
Phone: 888-203-8100

R O P - RIVERSIDE COUNTY  
MR. ELLIOTT DUCHON  
3939 THIRTEENTH STREET  
RIVERSIDE, CA 92502

April 18, 2000

Re: Form 471 Application Number: 148309  
Funding Year: 07/01/1999 - 06/30/2000  
Billed Entity Number: 143743

Thank you for your 1999-2000 E-rate application and for any assistance you provided throughout our review. We have completed processing of your Form 471. This letter is to advise you of our decisions.

#### FUNDING COMMITMENT REPORT

From your Form 471, we reviewed row-by-row discount requests in Items 15 and 16. We assigned each row a Funding Request Number (FRN). On the pages following this letter, we have provided a Funding Commitment Report for each FRN in your application.

Attached to this letter you will find a guide that defines each line of the Funding Commitment Report and a complete list of FRNs from your application. The SLD is also sending this information to your service provider(s) so arrangements can be made to begin implementing your E-rate discount(s). We would encourage you to contact your service providers to let them know your plans regarding these services.

#### FOR QUESTIONS

If you have questions regarding our decisions on your E-rate application, please notify us in writing. Your questions should be sent to: Questions, Schools and Libraries Division, Universal Service Administrative Company, Box 125 - Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981.

#### FOR APPEALS

If you wish to appeal to the SLD, your appeal must be made in writing and received by us within 30 days of issuance of this letter as indicated by its postmark. In your letter of appeal, please include: correct contact information for the appellant, information on the Funding Commitment Decision you are appealing and the specific Funding Request Number in question, and an original authorized signature. Appeals sent by fax, e-mail or phone call cannot be processed. Please mail your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125 - Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981. You may also call our Client Service Bureau at 888-203-8100. While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC): FCC, Office of the Secretary, 445 12th Street SW, Room TW-A 325, Washington, D.C. 20554.

#### NEXT STEPS

Once you have reviewed this letter and have determined that some or all of your requests have been funded, your next step is to complete and submit the enclosed FCC Form 486. This Form notifies the SLD that you are currently receiving or have begun receiving services approved for discounts and provides certified indication that your technology plan(s) has been approved. As you complete your Form 486,



you should also contact your service provider to verify they have received notice from the SLD of your commitments. After the SLD processes your Form 486, we can begin processing invoices from your service provider(s) so they can be reimbursed for discounted services they have provided you. For further detailed information on next steps, please review all enclosures.

**NOTICE ON RULES AND FUNDS AVAILABILITY**

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the universal service mechanisms for schools and libraries. FCC Form 471 Applicants who have received funding commitments continue to be subject to audits and other reviews that SLD or the Commission may undertake periodically to assure that funds have been committed and are being used in accordance with all such requirements. If the SLD subsequently determines that its commitment was erroneously issued due to action or inaction, including but not limited to that by SLD, the Applicant, or service provider, and that the action or inaction was not in accordance with such requirements, SLD may be required to cancel these funding commitments and seek repayment of any funds disbursed not in accordance with such requirements. The SLD, and other appropriate authorities (including but not limited to USAC and the FCC) may pursue enforcement actions and other means of recourse to collect erroneously disbursed funds.

The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

We look forward to continuing our work with you on connecting our schools and libraries together through communications technology.

Sincerely,  
Kate L. Moore  
President, Schools and Libraries Division, USAC

Enclosures

## EXPLANATION OF A FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each approved E-rate funding request from your application. We are providing the following definitions.

**FUNDING REQUEST NUMBER (FRN):** A Funding Request Number is assigned by the SLD to each line completed in Items 15 and 16 of your Form 471 once an application has been processed. This number is used to report to applicants and vendors the status of individual discount requests submitted on a Form 471. Applicants and vendors learned about FRNs when they received their Receipt Acknowledgement Letter and must use these numbers when completing the Form 486 and Invoices. An FRN will never be longer than 10 digits. If a FRN is shorter than 10 digits, applicants are advised to add zeroes to the front of the numbers to reach 10 digits when filing post-commitment forms.

**FUNDING STATUS:** Each FRN will have one of six definitions: "Funded", "Denied", "Partially Funded", "Funds Exhausted", "Unfunded", or "As Yet Unfunded". An FRN that is "Funded" will be approved at the level that SLD determined is appropriate for that item. That will generally be the level requested by you unless the SLD determines during the application review process that some adjustment is appropriate, for example, a different discount percentage for that FRN than the Form 471 featured. A "Denied" FRN is one for which no funds will be committed, and the reason for that decision will be briefly explained in the "Funding Commitment Decision", and amplification of that explanation may be offered in the section, "Funding Commitment Decision Explanation". In accordance with FCC program rules, FRNs are "Partially Funded" or "Unfunded", if the total amount of funds in the Universal Service Fund is insufficient to fully fund or fund all approved requests. If the Form 471 was received after all the funds in the Universal Service Fund were allocated and it was processed, the status will indicate "Unfunded - Funds Exhausted". "As Yet Unfunded" is a temporary status that would be assigned to an FRN when the SLD is uncertain at the time the letter is generated whether there will be sufficient funds to make commitments for a particular service type at a particular discount level. For example, if your application included both telecommunications services and internal connections, you might receive a letter with our funding commitment for your telecommunications requests and a message that your internal connections requests are "As Yet Unfunded". You would then receive a later letter regarding our funding decision on your internal connections requests.

**SPIN (Service Provider Identification Number):** A unique number assigned by the Universal Service Administrative Company to vendors seeking payment from the Universal Service Fund for participating in the universal service support programs. A SPIN contains 9 digits and should be included by applicants on their completed Form 471 applications. A SPIN is also used to verify delivery of services and to arrange for payment.

**SERVICE PROVIDER NAME:** The legal name of the service provider.

**PROVIDER CONTRACT NUMBER:** The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.

**SERVICES ORDERED:** The type of service ordered from the service provider, as shown on Form 471.

**EARLIEST POSSIBLE EFFECTIVE DATE OF DISCOUNT:** The first possible date of service for which the SLD will reimburse service providers for the discounts for the service. Note: If the actual service start date provided on a Form 486 is later than this date, the actual service start date set forth in the Form 486 will be the effective date of the discount.

RCOE  
Exhibit C  
Page 3 of 9